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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rudy Bonefas

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EXAMINER

PHILLIPS, HASSAN A

ART UNIT

PAPER NUMBER

2445

MAIL DATE

DELIVERY MODE

12/03/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/739,844	Applicant(s) BONEFAS ET AL.	
	Examiner HASSAN PHILLIPS	Art Unit 2445	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 23 September 2010.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 19, 21-24 and 26-28 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 24 and 26-28 is/are allowed.

6) ☒ Claim(s) 19 and 21-23 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/26/10; 9/3/10; 7/7/10

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to communications filed September 23, 2010. Claims 29 and 31-33 are canceled. Claims 1-18, 20, 25, 30 and 34-41 were previously canceled. Therefore, claims 19, 21-24 and 26-28 remain pending in the application.

Information Disclosure Statement

2. The information disclosure statements filed October 26, 2010, September 3, 2010, and July 7, 2010 have been received and considered by the examiner.

Claim Rejections - 35 USC § 112

3. With regards to the cancellation of claims 29, and 31-33, the examiner has withdrawn the rejection to the claims under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 101

4. In response to applicant's argument that claims 19 and 21-23 are statutory as written, the examiner respectfully disagrees. Applicant argues that the claims recite a "protocol gateway" and a "client device" and directs the examiner to the recent Federal Circuit decision of *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. Oct. 30, 2008).

The examiner submits nevertheless that the Bilski rationale only applies to "process" claims as recited under 35 U.S.C. 101. Applicant instead is claiming "a message router", or a machine as recited under 35 U.S.C. 101. The test for whether a claim satisfies this statutory category is whether the claim recites some sort of structure

in the body of the claim that enables the claim to be a machine. In applicant's claimed invention, although the claim recites a "protocol gateway" and a "client device" these are not elements of structure for the claimed message router. Accordingly the rejection of claims 19 and 21-23 are maintained.

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 19, 21-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

7. With regards to claim 19, although the claim recites a "message router", the claimed message router is merely comprised of a "load balancer module" and a "routing module". Giving broadest reasonable interpretation to the claims a "module" may comprise of software. Software fails to fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101.

8. Claims 21-23 depend from claim 19 and fail to remedy the deficiencies indicated above.

Allowable Subject Matter

9. Claims 24, 26-28 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter: Claims 24 and 26-28 have been amended to clearly define applicant's claimed invention, thereby distinguishing the claimed invention from the teachings of the cited prior art. More specifically, the prior art of record fails to expressly disclose the invention as a whole including: routing a message from a message router to a particular protocol gateway based on (i) a determined least recently used protocol gateway and (ii) a particular protocol utilized by a client device associated with the message, as recited in independent claim 24.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASSAN PHILLIPS whose telephone number is (571)272-3940. The examiner can normally be reached on M-F 9a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HASSAN PHILLIPS/
Primary Examiner, Art Unit 2445